INDEX.

PAGE

I. Illinois observes the rule that contentions based upon the Federal or State Constitution must be made in the trial court or they are not preserved for consideration on appeal or writ of error. Therefore no Federal constitutional question is preserved for review 3

Cases Cited.

Pierce v. Carpentier, 20 Ill. 2d 526..... 3

People v. Touhy, 397 Ill. 19..... 3

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

NO. 898

BEATRICE LYNUM,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

This Court has asked Illinois to file a second response to the petition for *certiorari* in this case "in light of the allegations made by petitioner at pages 66-67 in her brief in the Supreme Court of Illinois."

"It is abhorrent to justice to obtain statements under promise of leniency; to renege on the promise, and then use such statements to convict a citizen and incarcerate her in the penitentiary for the next ten years; and such action constitutes a denial of due process of law under both the state and federal constitutions."

This response is addressed to the question stated by the Court:

PETITIONER DID NOT INVOKE ANY PROVISION OF THE CONSTITUTION OF THE UNITED STATES IN THE CRIMINAL COURT OF COOK COUNTY.

The petition for *certiorari* in this case, although prepared by counsel and not by petitioner *pro se*, does not disclose that petitioner ever raised any Federal constitutional question at any time in either the Criminal Court of Cook County or in the Supreme Court of Illinois.

It now appears that petitioner did assert *in the Supreme Court of Illinois* that the reception in evidence of her confession violated the Due Process Clause of the Federal Constitution in that it appears that the confession was obtained by promises of leniency. But it does not appear that petitioner ever invoked the Fourteenth Amendment or any other provision of the Constitution of the United States in the trial court.

Although the Supreme Court of Illinois does discuss petitioner's contention, it does not treat that contention as based upon any invocation of the Constitution of the United States or the Constitution of Illinois.

I.

ILLINOIS OBSERVES THE RULE THAT CONTENTIONS BASED UPON THE FEDERAL OR STATE CONSTITUTION MUST BE MADE IN THE TRIAL COURT OR THEY ARE NOT PRESERVED FOR CONSIDERATION ON APPEAL OR WRIT OF ERROR. THEREFORE NO FEDERAL CONSTITUTIONAL QUESTION IS PRESERVED FOR REVIEW.

Illinois has steadfastly applied the rule that a contention based upon the Federal or State Constitution must not only be made in the trial court but must explicitly invoke the provision of the Federal or State Constitution that is relied upon and must show with reasonable particularity how and wherein the Illinois litigant contends that the constitutional provision is violated in his case.

Unless this is done, the contention is not preserved nor will it be decided as a constitutional question.

So far as we are aware, the most recent clear expression of this rule occurs in *Pierce* v. *Carpentier*, 20 Ill. 2d 526, which, though a civil suit involving the revocation of a driver's license, cites and is rested upon *People* v. *Touhy*, 397 Ill. 19, a leading Illinois case on the subject in the field of criminal law. In the *Pierce* case, the Supreme Court of Illinois held that

> "a naked statement that the statutes alleged were 'unconstitutional,' with the result that no precise constitutional issues could be formed or defended against", there being no "specific allegation as to the constitutional rights or provisions involved,"

the constitutional question tendered to the Supreme Court of Illinois was not preserved for decision.

In *People v. Touhy*, 397 Ill. 19, the Supreme Court of Illinois held that where a constitutional question based, not upon the alleged unconstitutionality of a statute, but upon the facts of the particular case, was suggested in the trial court but was not clearly and appropriately raised, the constitutional contention would not be entertained.

It is therefore respectfully submitted that *certiorari* should be denied in this case.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Room 900,
Chicago 1, Ill. (FI 6-2000),
Attorney for Respondent.